

Application Serial No. 10/540,891
Reply to office action of March 3, 2010

PATENT
Docket: CU-4297

REMARKS/ARGUMENTS

Reconsideration is respectfully requested.

Claims 1-48 are pending before this amendment. By the present amendment, claims 2, 8, 12, 18, 22, 26, 29, 32 and 35 are amended. No new matter has been added.

In the office action (page 2), claims 2, 8, 12, 18, 22, 26, 29, 32 and 35 stand objected under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the invention.

In particular, the examiner alleges that the term "them" renders claims 2, 8, 12, 18, 22, 26, 29, 32 and 35 indefinite. The applicants respectfully disagree as pronouns do not automatically render a claim indefinite and it is clear as to what the term "them" is referring to. Nevertheless, to avoid any further disagreement on the matter the applicant have amended these claims to remove the term "them".

As to claim 17, the applicants respectfully disagree. The examiner's attention is respectfully directed to lines 6-7 of claim 17 which recite --a pixel-based horizontal disparity map and a **pixel-base vertical display map**—. Thus, there is sufficient antecedent basis for "the vertical disparity map..." in step (e) and (h).

As to claim 39, the applicants respectfully disagree. Claim 39 does not recite "the first auxiliary..." in line 1. The applicants believe that the examiner is instead referring to claim 40. Claim 40 depends from claim 39, which depends from claim 28. Claim 28, line 9 recites --a first auxiliary component encoder...—. Accordingly, there is sufficient antecedent basis and withdrawal of the rejection is respectfully requested.

As to claim 43, the applicants respectfully disagree. The examiner's attention is respectfully directed to line 2 of claim 43, which recites --additionally outputs quantized data of a **vertical disparity map**—. Accordingly, there is sufficient antecedent basis for "the vertical disparity map..." in line 5-6 and 14-15; and therefore, withdrawal of the rejection is respectfully requested.

In the office action (page 3), claims 1-38 and 41-46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2002/0009137 (Nelson)

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in view of ISO/IEC JTC1/C29/WG11 Coding of Moving Pictures and Audio (ISO).

The applicants respectfully disagree at least since the reference "Description of Exploration Experiments in 3DAV", MPEG (ISO/IEC JTC1/SC29/WG11), no. N5169, 25 October 2002, pages 1-9, XP030012488 Shanghai, China section 4 "EE3-Stereoscopic video coding using MAC"; is not by "another" as required by 35 U.S.C. §102(a).

The examiner attention is respectfully directed to the last paragraph of EE3 - Stereoscopic video coding using MAC which informs that Sukhee Cho of ETRI and Yong Ham Kim of the University of Seoul are participants of EE3 - Stereoscopic video. Sukhee Cho and Yong Ham Kim are listed as inventors of the present application. Any invention that is disclosed in the published article and claimed in the present application was derived only by Sukhee Cho and Yong Ham Kim and thus is not an invention "by another." The applicants have attached a §132 declaration to this effect and accordingly request withdrawal of the outstanding rejection is respectfully requested at least since the published article is not available as prior art under 35 U.S.C. §102(a).

In the office action (page 24), claims 39-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nelson in view of ISO, and further in view of Well Known Prior Art.

As noted above, the published article (ISO) is not available as "prior art" under 35 U.S.C. §102(a).

Additionally, the applicants respectfully traverse the examiner use of Official Notice.

With respect to the rejection of claims 39-40, the applicants respectfully submit that the application of Official Notice is improper.

With respect to Official Notice, the MPEP states that "such rejections should be judiciously applied" (see MPEP § 2144.03). The applicants respectfully note that contrary to the caution advised by the MPEP, in this case, the Office Action liberally applied Official Notice to for conclusory reasons that are not supported by the record.

The MPEP goes on to mandate that "Official notice without documentary evidence to support an [E]xaminer's conclusion is permissible only in some circumstances" (see MPEP § 2144.03(A)). "It would not be appropriate for the

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[E]xaminer to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of **instant and unquestionable** demonstration as being well-known" (see *Id.*, emphasis added). "For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must **always** be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21" (*Id.*, emphasis added).

The applicants respectfully note that no such support has been provided in this case. Reviewing courts must rely on the record, and the Federal Circuit has always required that absent the case where Official Notice is "instant and unquestionable", the Office Action must provide support and reasoning for Official Notice to be proper.

In the instant case, the Office Action states:

"Nelson is silent in regards to storing the reconstructed video object data in a memory; a motion estimator for comparing the first image with the reconstructed video object data of a previous frame stored in the memory, and outputting a motion vector; and a motion compensator for comparing the motion vector output by the motion estimator with the reconstructed video object data of a previous frame stored in the memory, and outputting motion compensation data.

However, Official Notice is taken that both the benefit and concept of the limitation as claimed is notoriously well known and expected in the art. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate in Nelson (modified by ISO) for providing improved image coding and quality".

However, per the above, the facts asserted as well-known must be capable of instant and unquestionable demonstration as being well-known, and the applicants respectfully submit that such is clearly not the case here. If the examiner continues to believe that the above-recited features are well known in the art, the applicants respectfully request that the examiner provide a reference or references in the next Office Action allegedly offering evidence that this is the case.

If the applicants adequately traverse the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to

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support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

(MPEP § 2144.03(C)). The legal standard for applying Official Notice under MPEP § 2144.03 is rigorous, and the applicants respectfully submit that the present application of Official Notice falls short of meeting this high standard.

Accordingly, for the reasons set forth above, it is respectfully requested that the rejection be withdrawn.

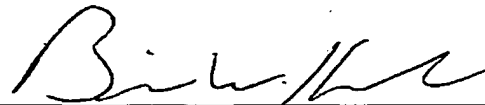
In the office action (page 27), claims 47-48 stand rejected under 35 U.S.C. §102(e) as being anticipated by ISO. As noted above, the published article (ISO) is not available as "prior art" under 35 U.S.C. §102(a). For at least this reason the applicants respectfully submit that claims 47-48 are allowable and request withdrawal of the outstanding rejections.

For the reasons set forth above, the applicants respectfully submit that claims 1-48 pending in this application are in condition for allowance over the cited references. Accordingly, the applicants respectfully request reconsideration and withdrawal of the outstanding rejections and earnestly solicit an indication of allowable subject matter.

This amendment is considered to be responsive to all points raised in the office action. Should the examiner have any remaining questions or concerns, the examiner is encouraged to contact the undersigned attorney by telephone to expeditiously resolve such concerns.

Respectfully submitted,

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